

**STATEMENT OF THE HONORABLE JON W. DUDAS, UNDER SECRETARY OF COMMERCE  
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND  
TRADEMARK OFFICE BEFORE THE COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT  
MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA  
United States Senate**

**"Finding and Fighting Fakes: Reviewing the Strategy Targeting Organized Piracy"  
JUNE 14, 2005**

**Introduction**

Chairman Voinovich, Ranking Member Akaka, and Members of the Subcommittee:

Thank you for this opportunity to appear before you once again to discuss international intellectual property (IP) piracy and counterfeiting problems. In the year since I last testified before your Subcommittee, there have been several significant developments regarding the U.S. Department of Commerce's role in protecting IP both domestically and overseas. Secretary of Commerce Carlos Gutierrez is keenly aware of the increasing significance of IP protection for U.S. businesses and innovators and has made combating piracy and counterfeiting a top priority for the entire Department. I was pleased Secretary Gutierrez, who recently participated in his first trip to Russia and China as Secretary of Commerce, urged Russian leaders to strengthen protection of intellectual property rights (IPR). In addition, Secretary Gutierrez told Chinese business officials on the first day of his visit to China "Intellectual property rights violations are a crime and we don't believe we should be negotiating crimes with our trading partners."

As Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO), I am dedicated to marshalling U.S. government efforts to reduce the toll that IP theft takes on U.S. IP owners. I am very appreciative of the Subcommittee's interest in addressing additional ways to protect U.S. IP owners' assets, and I commend you for holding today's hearing on the U.S. government's efforts to combat international piracy and the STOP! (Strategy Targeting Organized Piracy) Initiative. STOP! is the most comprehensive U.S. government-wide initiative ever that offers a serious solution to combat the growing problem of global piracy and counterfeiting. The STOP! Initiative has brought together all the major players at the highest levels -- the Federal government, private sector and trade partners -- and is the culmination of a lengthy, multi-agency effort, in consultation with the private sector and Members of Congress. For the past four years, this Administration has vigorously worked to enforce IPR and clearly understands that IP is a vital component of our nation's economy. The STOP! Initiative allows us to leverage the Bush Administration's efforts and to provide new innovative solutions to better protect our nation's IPR. STOP! gives our nation's businesses concise steps to take to protect themselves from international pirates and counterfeiters who are robbing billions of dollars from the U.S. economy.

**Scope of Global IP Piracy and Counterfeiting Problem**

Increasingly, both the United States and our trading partners are relying on IP to drive economic growth. This is because competitive success in a market economy depends more and more on the IP assets held by an institution -- from the skills of its employees to the results of its latest research. IP-based businesses, such as the software and entertainment industries, now represent the largest single sector of the U.S. economy.

According to the International Intellectual Property Alliance, U.S. copyright industries continue to lead the U.S. economy in their contributions to job growth, gross domestic product (GDP), and foreign sales/exports. Between 1977 and 2001, the U.S. copyright industries' share of the GDP grew at an annual rate more than twice as fast as the rest of the U.S. economy. In 2002, the U.S. "core" copyright industries' activities accounted for approximately 6 percent of the U.S. GDP

(\$626.6 billion).<sup>1</sup> In 2002, the U.S. copyright industries achieved estimated foreign sales and exports of \$89 billion, leading all major industry sectors, including motor vehicles (equipment and parts), aircraft and aircraft parts, and the agricultural sector.<sup>2</sup>

Unfortunately, the economic benefits of capitalizing on IPR have captured the attention of pirates and organized crime. The global criminal nature of IP piracy has effects in other areas as well. As former U.S. Attorney General John Ashcroft reported: "In addition to threatening our economic and personal well being, intellectual property crime is a lucrative venture for organized criminal enterprises. And as law enforcement has moved to cut off the traditional means of fund-raising by terrorists, the immense profit margins from intellectual property crimes risk becoming a potential source for terrorist financing." Senator Susan Collins, Chairwoman of this Committee, stated three weeks ago during her opening remarks of the "Counterfeit Goods: Easy Cash for Criminals and Terrorists" hearing that "The unclassified evidence linking terrorism and counterfeiting is compelling and spans several years and agencies."

### **USPTO and DOC Efforts to Combat IP Theft**

Given these threats to U.S. economic interests and our national security, the USPTO and our colleagues in the Department of Commerce are working hard to curb IP crime and strengthen IP enforcement in every corner of the globe. Because American IP owners compete in a global marketplace, we must expand our efforts to promote IP protection internationally. We must make sure that American IP owners have sufficient knowledge and legal tools to fight piracy and counterfeiting. We also must provide foreign countries technical assistance on drafting and implementing effective IP laws and promoting the effective enforcement of IP rights.

<sup>1</sup> "Copyright Industries in the U.S. Economy: The 2004 Report," Stephen E. Siwek, Economists Inc., prepared for the International Intellectual Property Alliance. "Core" industries include: newspapers, publishing, recording, music, motion pictures, radio, television broadcasting and computer software.

<sup>2</sup> "Id.

### **The Role of the USPTO and IP Policy**

The passage of the American Inventors Protection Act of 1999 (AIPA) (P.L. 106-113) set the stage for the USPTO to advise the President, through the Secretary of Commerce, and all Federal agencies, on national and international IP policy issues, including IP protection in other countries. USPTO is also authorized by the AIPA to provide guidance, conduct programs and studies, and otherwise interact with foreign IP offices and international intergovernmental organizations on matters involving the protection of intellectual property.

Our established Offices of International Relations and Enforcement carry out the functions authorized by the AIPA. These include (1) working with Congress to implement international IP treaties; (2) providing technical assistance to foreign governments that are looking to develop or improve their IP laws and systems; (3) training foreign IP officials on IP enforcement; (4) advising the Department of State and the Office of the U.S. Trade Representative (USTR) on drafting/reviewing of IP sections in bilateral investment treaties and trade agreements; (5) advising USTR on intellectual property issues in the World Trade Organization (WTO) and working closely with USTR in seeking assurances from our trading partners of higher levels of IP enforcement than those set forth in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs); and (6) working with USTR and industry on the annual review of IP protection and enforcement under the Special 301 provisions of the Trade Act of 1974. The USPTO also represents the United States in United Nation bodies, such as the World Intellectual

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<sup>1</sup> "Copyright Industries in the U.S. Economy: The 2004 Report," Stephen E. Siwek, Economists Inc., prepared for the International Intellectual Property Alliance. "Core" industries include: newspapers, publishing, recording, music, motion pictures, radio, television broadcasting and computer software.

<sup>2</sup> Id.

Property Organization (WIPO), to help set the international standards for IP protection and enforcement.

### **The Strategy Targeting Organized Piracy (STOP!) Initiative**

I am pleased to discuss with you the STOP! Initiative, the most comprehensive U.S. government-wide initiative ever advanced to demolish the criminal networks that traffic in fakes, stop trade in pirated and counterfeit goods at America's borders, block bogus goods around the world, and help small businesses secure and enforce their rights in overseas markets. What makes the STOP! Initiative so unprecedented is that for the first time, the issues surrounding IP enforcement have been raised to the highest levels in the Administration, and there is strong coordination by the NSC of the key agencies with a role to play in finding and fighting fakes. There are several important features of the STOP! Initiative, both international and domestic, that I would like to discuss.

### **International Efforts**

#### *Harmonizing the Trademark Application Process*

The USPTO is seeking to simplify, streamline, and improve the cost efficiency of the trademark application process across borders in order to make it more efficient and less burdensome for right holders. The Trademark Law Treaty (1994) ("TLT"), administered by WIPO, harmonizes trademark application and renewal formalities among its members. It contains a maximum list of formalities that members can require during the trademark application and renewal process. From the intellectual property owner's perspective, the TLT saves time and money in trademark prosecution and maintenance. As part of the STOP! Initiative, the USPTO will seek to harmonize trademark formality standards with all WIPO members, especially EU countries, Japan and Korea, and will continue to actively work with like-minded countries to find a consensus on how best to revise the TLT so as to make the process of applying for and maintaining trademarks more streamlined, efficient, and cost effective for all trademark applicants.

#### *Improving International IPR Regimes by Posting IP Attaché Abroad*

The importance of intellectual property to the global economy cannot be overstated. With knowledge-intensive industries forming an ever-greater part of the world economy, intellectual property has become a key issue for both businesses and government policy makers all over the world. Fast moving developments in new technologies ranging from computer software to biotechnology, and the emergence of the Internet as a tool to move products across international borders pose new challenges for inventors and innovators, big and small companies, and creative artists, all of who must rely on intellectual property. It also poses challenges for government policy makers to find ways to effectively promote, protect, and enforce valuable economic and creative resources.

As the agency with the technical experts in intellectual property protection and enforcement, the USPTO is in a unique position to offer technical assistance, training, and capacity-building programs to other countries to address and strengthen intellectual property protection and enforcement worldwide. As part of these efforts, the USPTO currently deploys two intellectual property lawyers to work overseas on intellectual property rights issues; namely, at the U.S. Embassy in Beijing, China, and at the U.S. Trade Representative Mission to the World Trade Organization in Geneva, Switzerland. Placing our Attaché, who is fluent in Mandarin, for a three-year appointment in China highlights the seriousness of IP violations in China and has enhanced the USPTO's ability to work with Chinese government officials to improve IP laws and enforcement procedures in addition to assisting U.S. businesses to better understand the challenges of protecting and enforcing their IPR in China.

#### *Building Coalitions*

The ultimate success of the STOP! Initiative involves building coalitions with many of our likeminded trading partners, such as Japan, the United Kingdom, and France, who have all recently launched similar initiatives. Our goal is to fight against IPR thieves by seeking agreement

with like-minded partners to block trade in pirated and counterfeit goods, conduct joint enforcement actions, and actively share information on the movement of suspected fake products. We are seeking to continue working with our partners in the G-8, Organization for Economic Cooperation and Development (OECD) and the Asia-Pacific Economic Cooperation (APEC) forum. Cooperation on new initiatives to improve the global intellectual property environment is essential to disrupting the operations of pirates and counterfeiters.

#### *International Outreach*

A delegation of U.S. officials from seven Federal agencies, including Deputy Under Secretary of Commerce for Intellectual Property Steve Pinkos, recently kicked off our international outreach effort to promote STOP! internationally. In April of this year, the STOP! Team began to open dialog with their counterparts in Hong Kong, Japan, Korea, and Singapore on how to stop the trade in fakes. On each leg of the trip, U.S. officials generated fruitful discussion and shared information on our efforts to combat the theft of inventions, brands, and ideas. This first leg abroad advanced our commitment by enlisting our trading partners in an aggressive, unified fight against intellectual property theft. Our outreach to Asia marked the beginning of a sustained global campaign to build international cooperation on the STOP! Initiative.

Last week, our USPTO representatives and officials from the STOP! agencies met with their counterparts and representatives from the private sector in five capitals throughout Europe. Our second global outreach tour was an important opportunity to continue developing enforcement mechanisms to raise the stakes for pirates and counterfeiters and share proposals on how to make it easier for businesses to protect their innovation at home and abroad. We have tentatively planned that countries receptive to cooperation on STOP! will be invited to attend a meeting in Washington, D.C. (likely in the fall of 2005) designed to formalize their participation and finalize a work plan.

#### **Domestic Efforts to Combat IP Theft**

##### *USPTO-Customs and Border Patrol (CBP) Initiative*

The U.S. Customs and Border Protection (CBP) at the Department of Homeland Security provides the opportunity for trademark registrants to record their registration with them. This recordation provides the basis upon which the trademark registrant can stop the importation of infringing goods at the U.S. border. In addition to action by CBP on the basis of the information in the recordation form, a trademark registrant that has recorded the registration with CBP can also provide them with specific information about infringing shipments into the United States such that CBP can prevent importation of those shipments.

The USPTO believes that CBP border enforcement is not utilized by trademark owners to its fullest. To that end, USPTO is in the process of creating a notice that will be mailed to trademark registrants when they receive their Certificate of Registration that will direct them to the services that CBP offers. Furthermore, USPTO is in the process of putting a website link on our trademark homepage to the CBP IPR website which contains the form for recordation. Once the CBP electronic recordation system is online, USPTO's website will link directly to the CBP's recordation system. USPTO believes that educating trademark registrants to the services offered by CBP will increase awareness of the importance for trademark owners to actively enforce their rights and address the issue of infringing importation directly. Such efforts will increase the value of the trademark goods for the trademark owner and will decrease the cases where consumers are confused and disappointed by infringing imported products that do not meet their quality expectations.

##### *Hotline and Website*

The USPTO manages a hotline, 1-866-999-HALT, established by the Department of Commerce to help businesses protect their IPR at home and overseas. The goal of the hotline is to empower U.S. businesses to secure and enforce their IPR by providing them the information they need to

secure their patents, copyrights, and trademarks, and to enforce these rights in the United States and abroad. To date, the USPTO has received well over 400 STOP! hotline phone calls.

Callers receive information from IP attorneys at the USPTO with regional expertise on how to secure patents, trademarks, and copyrights, and on the enforcement of these rights. Businesses and innovators now have access to a place to learn more about the risks of global piracy and counterfeiting and how to protect their IP rights in both individual countries and in multiple countries through international treaties. In addition, we have established a link from our USPTO website to [www.stopfakes.gov](http://www.stopfakes.gov) on the Department of Commerce's website, which provides in depth detail of the STOP! Initiative.

One key feature of the Internet website at [www.stopfakes.gov](http://www.stopfakes.gov) is the country-specific "Toolkits" that have been created by our embassies overseas to assist small and medium sized businesses with IPR issues in China, Korea, and Mexico. In the next few months, we expect additional Toolkits for more countries. STOP! also seeks to increase global awareness of the risks and consequences of IP crimes through a section of its website, [www.stopfakes.com/smallbusiness](http://www.stopfakes.com/smallbusiness), that is specifically designed and operated by the USPTO to answer common questions of small businesses so they can better identify and address their IP protection needs. We're working with organizations like the U.S. Chamber of Commerce and the National Association of Manufacturers to help spread the word about the benefits of filing for IP protection, both domestically and abroad. We have also developed informational materials -- that can be downloaded off our website -- to help guide small businesses through the often-complicated world of intellectual property protection.

#### *No Trade in Fakes Program*

The Department of Commerce is in charge of another important component of the STOP! Initiative, the no-trade-in-fakes program that is being developed in cooperation with the private sector. This is a voluntary, industry-driven set of guidelines and a corporate compliance program that participating companies will use to ensure their supply chains and retail networks are free of counterfeit or pirated goods.

#### *Small Business Concerns*

While piracy, counterfeiting, and theft of intellectual property pose a serious threat to all American businesses, small and medium-sized businesses are particularly at risk in today's global marketplace because they often lack the knowledge and expertise to effectively combat it. Because small and medium-sized businesses typically do not have personnel or maintain large operations in other countries, American products and branding can be stolen without the rightful owner even being aware of it. Small businesses lack the knowledge, expertise, and resources to prevent the theft of their ideas, their products, and their good names and generally do not have the level of access to specialized legal counsel available to larger companies. In the fierce competition for the time of a typical small businessman or woman, things that go beyond the payroll, accounting and general operations -- including IP protection -- often get put on the back burner.

That is why the USPTO has launched an intensive communications program specifically designed to educate small businesses about protecting their intellectual property from pirates and counterfeiters -- both in the United States and abroad. The USPTO wants small businesses to consider IP protection at their inception -- to make it part of their business planning; to consider if they need to secure IP protection, what type of protection to apply for, when and where to apply, and how to go about it. We reviewed various market research studies earlier this year and found that only a small percentage of small businesses that do business overseas are aware that their IP protection in the United States does not travel -- that they have to gain protection in every country where they do business. Among small businesses that create and/or own intellectual property, research studies show a general lack of familiarity with when and how to protect their IP abroad.

### *Campaign on Protecting Intellectual Property Rights*

For the reasons just noted, as part of our public affairs campaign, the USPTO is holding a series of seminars around the country to assist small and medium sized companies as to what IPR are, why they are important, and how to protect and enforce these rights domestically and internationally.

The first of these workshops took place three weeks ago in Salt Lake City, Utah, and already, we have found an enormous amount of interest in USPTO's outreach program. While most attendees were from the State of Utah, others came from New York, Pennsylvania, California, Alaska, and Georgia. Aimed at small business owners and employees, the conference audience contained a cross section of IP awareness levels -- from the novice businessperson to the experienced IP attorney. I joined your colleague Congressman Chris Cannon, as well as nine USPTO staff attorneys, in providing information designed to raise awareness as to the importance of IP to businesses and to stress the importance of protecting IPR. During the two-day seminar, patent, trademark, and copyright experts, and lawyers from the USPTO provided attendees with specific details and useful tips about protecting and enforcing their intellectual property rights in the United States and around the world. We have reviewed the evaluation forms from our first event and it is my pleasure to report -- and this is a compliment to our USPTO staff who participated -- the feedback was overwhelmingly positive.<sup>3</sup>

We are replicating this program in other cities throughout several regions of the U.S. in the coming months. In each seminar lawyers and other professionals from the USPTO will provide attendees with specific details and useful tips about how to protect and enforce their IPR in the United States and around the world. Each program is tailored to the particular needs of the city host. Therefore, the topics of special interest to the city's business community will be addressed. These seminars will be useful to anyone with an already established business as well as entrepreneurs who are just starting up enterprises.

### *China Road Shows*

The USPTO has a group of in house IP experts on China with extensive knowledge of IP legal regimes in China. USPTO's "China team" has been actively participating in DOC's "China road shows" to various cities in the United States, as part of an outreach effort to talk to small businesses about how to protect and enforce their IP in China. The STOP! Initiative is a large component of each of these seminars. So far, USPTO has visited several cities, including Fresno, CA; Kansas City, KS; Oakland, CA; Manchester, NH; Pittsburgh, PA, and plan for several more this year.

The USPTO has also developed its own China road show with another in a series to take place in Detroit, Michigan beginning this week. The seminar entitled "China's Impact on Intellectual Property: Understanding the New Realities within a Global Economy" will provide comprehensive information on protection and enforcement of intellectual property in China for companies ranging from small businesses contemplating entering the China market to large corporations with established presence in China. Topics include a review of recent laws and regulations promulgated by the Chinese government that may affect how you protect and enforce your intellectual property, what the U.S. government is doing to improve the intellectual property protection and enforcement environment in China, how best to protect your business assets to avoid intellectual property problems, how to recognize when your product has been infringed, and what to do if infringement occurs.

In addition, and closer to home, the USPTO's China team conducted two regional seminars earlier this year. During the February event in Washington, D.C., the China team discussed the Chinese criminal justice system for handling intellectual property rights infringement cases and

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<sup>3</sup> The evaluations also had complimentary feedback such as "it was a great IP conference for small business." Again, I must brag about the efforts of my staff.

the Chinese Supreme Court's recently issued Judicial Interpretations. In April, the USPTO sponsored a seminar on the general IP enforcement environment in China. Both of these seminars provided very useful information on protecting and enforcing IP rights in China.

#### *This Week's Activities for Small Businesses*

I am leaving today for a USPTO sponsored 2-day seminar in Detroit, Michigan on China's impact on IP – understanding the new realities within a global economy. Attendees will learn about Chinese IP laws and new developments, establishing and maintaining their IP portfolio in China, recognizing and responding to infringing activities, plus learn from private sector representatives of first-hand experiences related to IPR in China. In addition, I am pleased next month the USPTO, in recognition of the special threat posed to small businesses, will launch its "Small Business in a Big World" campaign as part of our efforts to educate small businesspersons about the importance of protecting their IP from piracy and counterfeiting.

#### **Increasing and Communicating Enforcement**

The USPTO's Office of Enforcement works to raise the level of and standards for intellectual property enforcement worldwide. The Office of Enforcement accomplishes this mission by, among other things: (1) training law enforcement personnel and other government officials throughout the world on best practices for, and the importance of, enforcing intellectual property rights; (2) drafting and negotiating strong, modern intellectual property enforcement provisions in free trade and other international agreements with U.S. trading partners; and (3) monitoring how intellectual property rights are enforced by other countries, and, where appropriate, engaging other governments on enforcement issues and demanding increased intellectual property protection.

#### *Enforcement Training and Technical Assistance*

The USPTO provides a variety of IP enforcement training and technical assistance activities. These programs are designed to foster respect for IP, encourage governmental and right holders' efforts to combat infringement, and promote best practices in the enforcement of IPR. Our technical assistance and capacity building initiatives grew out of U.S. trade obligations to promote IP protection and assist developing countries in meeting their obligations under the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement. In addition, we have responded to increasing requests by foreign governments for such training and technical assistance activities. Our efforts have had positive results in some countries, measured by decreasing levels of IP piracy and counterfeiting, and the implementation of stronger legal protections in many of the countries in which we have provided such training.

#### *Bilateral and Multilateral Negotiations*

The USPTO advises many U.S. government agencies on issues involving IPR protection and enforcement involving countries, regions, and international organizations throughout the world. USPTO officials also support negotiations undertaken by the Department of Commerce, the USTR, and other officials on intellectual property matters in various countries. By working closely with the USTR, the U.S. Department of Justice, and the Department of Commerce's International Trade Administration, USPTO officials also work to provide for proportionate, deterrent penalties for commercial scale counterfeiting and piracy in East Asia, South Asia, and other regions.

#### *Special 301*

The USPTO advises the USTR in the administration of the Special 301 provisions in U.S. trade law, which requires the USTR to identify those countries that do not provide adequate and effective protection for IPR or lack of market access for products relying on intellectual property protection. The USPTO provides analyses of intellectual property laws of numerous countries, and participates in several bilateral consultations and negotiations conducted by the USTR under Special 301 and in the context of the U.S. trade agenda.

#### **Conclusion**

Mr. Chairman, the past year has presented great challenges and opportunities for all of the U.S.

Government's agencies that have a role in fighting the theft of intellectual property. The Administration rose to these challenges in several ways, including the launching of the STOP! Initiative. The requirements on the Department of Commerce and USPTO's expertise in the international arena have grown dramatically in the last few years. These demands will continue to increase in the next few years, along with our obligations to meet our core patent examination and trademark registration functions.

However, while there are challenges both here and overseas, there is reason for optimism. I remain hopeful that with the continued support and partnership of Congress, we will be able to do even more to provide American businesses and entrepreneurs with the valuable IP information and protection they need. We will continue to work closely with the IP community, small businesses coast-to-coast, the STOP! team, and you Mr. Chairman to meet the huge challenge of combating piracy and counterfeiting. Clearly, in terms of the economy and national security, much is at stake. That is why our dedicated team of experts will continue to work tirelessly to protect American intellectual property all around the globe. Thank you very much.